

# Agenda

## Item #3



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: January 16, 2012

Re: Request for Waiver of Late-Filing Penalty by Joseph R. Mackey

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Lobbyist Joseph R. Mackey was late in filing monthly reports covering November 2011 for five clients (Express Scripts, Inc.; Direct Marketing Association; L.L. Bean, Inc.; America's Health Insurance Plans; and CIGNA). He filed the reports six days late on December 21, 2011. Because the Legislature was not in session, he filed the "short form" report for each client, which is an affirmation that he did not lobby on behalf of the client during the month of November.

The monthly deadline for lobbyists to file their monthly reports is the 15<sup>th</sup> day of the month. The report covers the previous calendar month. Thus, lobbyists have 15 days after the end of the reporting period to file the report.

Although Mr. Mackey does not mention it in his letter, one contributing factor may have been that the Commission staff did not send the usual number of e-mail reminders to lobbyists for the December 15<sup>th</sup> deadline. Our PAC/Party/Lobbyist Registrar, Cindy Sullivan, was out of the office for two weeks for vacation during the weeks beginning December 5 and 12. She usually sends around four e-mail reminders to lobbyists between the 1<sup>st</sup> and the 15<sup>th</sup> day of the month. This is not required by law, but Ms. Sullivan sends the reminders to minimize late filing. In December 2011, Ms. Sullivan sent a single e-mail in the first week of December reminding lobbyists of the December 15<sup>th</sup> deadline. She explained that she would be on vacation during the reporting deadline.

Because Mr. Mackey filed five reports late, the total preliminary penalty is \$500. Mr. Mackey requests a waiver because he filed the reports as soon as he received the notice of late filing from the Commission staff (attached) and because, he states, this was the first occasion he was late in filing a lobbyist report with the Commission in at least 20 years. Our records show no late filing by Mr. Mackey since the staff began keeping electronic records seven years ago.

In 2011, the Maine Legislature amended the lobbyist disclosure laws to set out reasons for which the Commission may reduce a penalty for a late lobbyist report. (*see* 3 M.R.S.A. § 319, attached). The Commission staff recommends a 50% reduction because the total preliminary penalty of \$500 seems disproportionate to the harm suffered by the public. The public received very little information late, because the monthly reports filed by Mr. Mackey were merely a statement that no lobbying had occurred during November 2011. We recommend a total penalty of \$250.

Generally, the Commissioners have not granted waivers of late-filing penalties by lobbyists absent some good reason that the lobbyist filed late. In this instance, however, the staff recommends a 50% reduction because of the “multiplication factor” of five late reports resulting in a \$500 preliminary penalty and because the Maine Legislature recognized that proportionality was a legitimate factor that the Commission could consider under 3 M.R.S.A. § 319.

Thank you for your consideration of this memo.

RECEIVED

DEC 23 2011

Maine Ethics Commission

December 21, 2011

Commissioners  
Maine Commission on Ethics and Election Practices  
State House Station #135  
Augusta, Maine 04333

By: email and US Mail

Dear Commissioners:

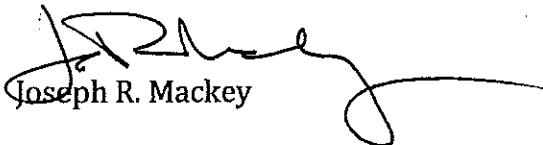
I received a letter from the Commission today informing me that I had failed to file my November lobbyist reports by December 15<sup>th</sup> and that I could be subject to a \$500 fine.

I would like to request a waiver of all or part of the fine.  
As soon as I received your letter, I immediately filed my reports. They were all short form reports because I conducted no lobbying for these clients in November.

There is no question that the fault is mine but I believe this is the first time I have been late for over 20 years at least.

I thank you for any consideration you may be able to give me.

Sincerely,

  
Joseph R. Mackey



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

December 19, 2011

**BY CERTIFIED MAIL AND REGULAR MAIL**

Joseph Mackey  
Public Affairs Group  
100 Water Street  
Hallowell, Maine 04347

Re: Express Scripts, Inc., Direct Marketing Association, L.L. Bean, Inc., America's Health Insurance Plans, CIGNA

Dear Mr. Mackey,

Our records show that your November monthly lobbyist disclosure report has not been filed to date for the above mentioned clients. The monthly report, due on the 15<sup>th</sup> of every month -- or the next business day if the 15<sup>th</sup> falls on a weekend or holiday, is required to be filed electronically by all lobbyists registered with the Commission by 11:59 p.m. The November report was due by 11:59 p.m. on December 15, 2011.

In addition, 3 M.R.S.A. §319(1) states that any person who fails to file a timely report may be assessed a penalty of \$50 for the first 24 hours each report is late and \$100 for every month the person is delinquent in filing the report after the first 24 hours; thus, to date your penalty is \$500 for five late filings. If you agree with this preliminary determination, you may use the attached billing statement to pay that penalty within 30 days of the date of this notice

However, if you have a valid reason for filing late, you may request a final penalty determination by the Commission. The Commission will notify you of the disposition of your case within 10 days after its determination.

To avoid further penalty, you should file the report as soon as possible. Pursuant to 3 M.R.S.A. § 319(1-A), any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to me at (207) 287-6221.

Sincerely,

Cindy Sullivan  
PAC, Party & Lobbyist Registrar

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

To: Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

From: Joseph Mackey, Lobbyist for:  
Express Scripts, Inc.,  
Direct Marketing Association,  
L.L. Bean, Inc.,  
America's Health Insurance Plans,  
CIGNA

Re: Penalty for late filing of the November 2011 monthly lobbyist disclosure report for 5 clients (\$500)

Amount Enclosed: \$ \_\_\_\_\_

*Please Make Check or Money Order Payable to:*  
**Treasurer, State of Maine**

Check/M.O. No.: # \_\_\_\_\_

Or you can go to [www.maine.gov/ethics](http://www.maine.gov/ethics) > Penalty Payment and pay on-line with a credit card

### **3 MRSA §319. PENALTY**

**1. Failure to file registration or report.** Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for every month the person fails to register or is delinquent in filing a report pursuant to section 317. If a registration or report is filed late, the commission shall send a notice of the finding of violation and preliminary penalty. The notice must provide the lobbyist with an opportunity to request a waiver of the preliminary penalty. If a lobbyist files a report required pursuant to section 317 within 24 hours after the deadline, the amount of the preliminary penalty is \$50. The commission may waive the fine or penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances or the fine or penalty is disproportionate to the level of experience of the lobbyist or the harm suffered by the public from the late registration or report. For purposes of this subsection, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the fine or penalty in whole or in part;
- B. An error by the commission; or
- C. Circumstances determined by the commission to warrant the waiver of the fine or penalty in whole or in part, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with this chapter, including, but not limited to, unexplained delays in Internet service.

**1-A. Notice of suspension.** Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

#### **2. [repealed]**

**3. Exemption.** Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.